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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,129	07/11/2003	Michael Jeschke	Q76438	2931

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EXAMINER

ZEWDU, MELESS NMN

ART UNIT	PAPER NUMBER
2617	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/617,129	Applicant(s) JESCHKE ET AL.	
	Examiner Meless N. Zewdu	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 9 is/are rejected.
- 7) ☒ Claim(s) 3-8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/11/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. This action is the first on the merit of the instant application.
2. Claims 1-9 are pending in this action.

Claim Objections

Claims 1 and 9 are objected to because of the following informalities: the claims are configured in a narrative form, as oppose to specifically pointing out each limitation. Appropriate correction is required.

Claims1 is objected to because of the following informalities: "valuedefined" should be separate words (see line 15). Appropriate correction is required.

Claim 1 is objected to because of the following informalities: a comma should be placed after the word 'indicating' or before the word 'if', on line 9. Appropriate correction is required.

Claim 1 is objected to because of the following informalities: the claims recites "that transmit powers which have been used to transmit that data –", which the redundant use of "that" adversely affects the clarity of the claim. Appropriate correction is required.

Claim 1 is objected to because of the following informalities: "in dependence from" is better changed to "independence with" (see on line 14. Appropriate correction is required.

Claim 5 is objected to because of the following informalities: "levelswich", on line 2 should be two separate words. Appropriate correction is required.

Claim 7 is objected to because of the following informalities: "**out of said maximum power levels**" should be placed in between commas. Appropriate correction is required.

Claim1 is objected to because of the following informalities: the preamble caps/concludes by setting a condition for " -- if no data is transmitted in said frame, the method comprising the steps of: ---" and then recites "setting the transmit power indicator of the indicator bits in dependence from a data power of the data bits if data is transmitted in the frame", thereby, the later contradicting the former. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "setting the transmit indicator power" in line 11.

There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "an average of that transmit powers which have been used to transmit that data within at least two of the preceding frames" in line 17-19. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art (APA) in view of Hwang et al. (Hwang) (US 7,010,317 B2).

As per claim 1: a method of operating a radio-based telecommunications system wherein a common physical channel is used to transmit data on the downlink from a radio base station being controlled by a radio network controller to a mobile user equipment (see paragraphs 0002 and 0006), wherein the data is transmitted in frame slots (paragraph 0004), each frame representing a combination of transport channels (paragraph 0005) and each slot of the frame having a field for carrying bits of said data (paragraph 0003) and having a field for carrying bits of an indicator (paragraph 0003), said indicator indicating the combination of said transport channels used in said frame (paragraph 0003). But, the APA does not explicitly teach about setting the transmit indicator power of the indicator bits in dependence from a data power of the data bits if data is transmitted in the frame, or if no data is transmitted in the frame, setting the transmit indicator power of said indicator bits in dependence from a virtual reference power which is calculated from parameters comprising first power values defined by a radio network element, in particular the radio network controller, or comprising second

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power values representing an average of that transmit powers which have been used to transmit that data within at least two of the preceding frames, as claimed by applicant.

However, in the same field of endeavor, Hwang teach about a method for determining the transmission power of a second TFCI (transport format combinations identification) wherein a first node B determines a transmission power level of the second TFCI bit to be higher than a ratio of transmission power of the dedicated channel data from a node B transmitting only the dedicated channel data to transmission of the first TFCI bit (see col. 5, line 44-col. 6, line 9). Note: claim 1 requires only one of the features to be satisfied among the plurality of features separated by the choice indicator "or".

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the APA with the teaching of Hwang so that a UE can control transmission power level of TFCI (see col. 5, lines 26-31).

As per claim 9: claim 9 is directed to an apparatus intended for performing the steps of claim 1. Hence, since the apparatus of claim 9 is required by the method claim of 9, claim 9 is rejected on the same ground and motivation as claim 1.

As per claim 2: with respect to claim 2, the preamble is an intended use and the features in the body of the claim are similar to the features of claim 1. Hence, claim 2 is rejected on the same ground and motivation as claim 2.

Allowable Subject Matter

Claims 3-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meless N. Zewdu whose telephone number is (571) 272-7873. The examiner can normally be reached on 8:30 am to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Banks-Harold Marsha can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

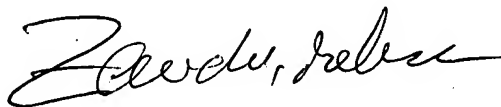
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Meless Zewdu

Examiner

A handwritten signature in black ink, appearing to read 'Zewdu, Meless', written in a cursive style.

26 November 2006.